

ESTIMATING FEES TO SUPPORT A NONMETALLIC MINING RECLAMATION PROGRAM



PUB-WA-832 2001



I. INTRODUCTION

A. BACKGROUND AND PURPOSE

Chapter 295, Wisconsin Statutes, requires that county and local nonmetallic mining reclamation programs be administered to ensure that uniform reclamation standards are implemented statewide. The Legislature intended that these reclamation programs be self-funded through fees on active mining operations. The fee amount is based only on the unreclaimed portions of active nonmetallic mining operations that were in operation after August 1, 2001. These fees are intended to support county or municipal program administration as well as Department statewide oversight and technical support.

This publication is intended to provide county and local non-metallic mining reclamation programs guidance that can be used when establishing fees for their program. It does not necessarily identify every aspect of the total program cost that will need to be considered.

Counties and local governments (the Regulatory Authority or “RA”) may set and collect fees that reflect, as closely as possible, the actual costs for administering the program including permitting, plan review and inspection costs. In addition, fees are to be collected and forwarded to the Department to cover the DNR's statewide administrative costs. The method of setting fees is to be established in the county or local reclamation ordinance.

It is very important that fees are established and maintained to closely reflect reasonable and actual costs. Inadequate fees would hamper the RA in its efforts to implement a successful reclamation program. On the other hand, clearly excessive fees would be unfair to operators, drive up costs and may result in a state audit.

B. HOW THE FEES WILL BE KEPT REASONABLE

The reasonableness of fees is ensured in four ways:

1. State law prohibits county or local government from setting and collecting reclamation fees that exceed their actual administrative costs.
2. Since fees must be established by ordinance, a public hearing before the county or local elected officials will be held prior to the adoption of the ordinance. This will provide an opportunity for operators and the public to express any concerns regarding the fee structure when the proposed ordinance comes before the county or local government board for ordinance adoption.
3. As required by law, DNR oversight of county and local programs includes annual and long-term oversight. On an annual basis, the DNR will receive and review annual reports. On a periodic basis, the Department will conduct comprehensive audits of non-metallic mine reclamation programs. Fees will be examined as part of these audits.

4. Chapter NR 135 sets a ceiling on local fees. If a county or local fee exceeds the DNR costs given in the fee tables contained in the rule, the RA must provide special justification.

II. ESTABLISHING FEES

A. INVENTORY OF EXISTING MINE AND UNRECLAIMED ACREAGE

The first step for the county or local office designated to serve as the RA is to **conduct an inventory** to determine the number of operations and affected acreage within its jurisdiction. Fees are assessed on the basis of total unreclaimed acres on the mine site (see definition in s. NR 135.03(25), Wis. Adm. Code). Areas subject to fees (unreclaimed acres) are either currently being mined, planned for mining in the calendar year or are areas that support mining activities such as processing areas and on-site storage areas. Examples of areas not subject to fees would be an adjacent area that was used for mining before August 1, 2001 and is no longer being used or an area that has already been reclaimed either permanently or on an interim basis if approved by the RA.

Possible Sources of Information for Use in
Conducting an Inventory:

Recent Aerial Photos
Local Officials
County or Local Zoning Records
Regional Planning Commissions
County GIS Information

B. ESTIMATING TIME AND RESOURCES

Following completion of the basic inventory, the RA will need to estimate what it will cost to administer a successful Nonmetallic Mining Reclamation Program. This is done by looking at all the tasks or work activities necessary to administer a successful program.

To facilitate an accurate estimate it is necessary to consider both one-time and on-going (continuing) administrative costs along with any specific conditions and circumstances that may be present in your county.

ONE-TIME COSTS

- Reclamation Plan review for existing mines over the first 3 years
 - Review of post-mining land use
 - Compliance with reclamation standards
 - Review of financial assurance
- Processing of automatic permits (30 day review time)
- Plans submitted after August 1, 2001 –review new applications, reclamation plan and financial assurance within 90 days as required by rule.
- Possible public hearings
 - New mines
 - Significant modifications to existing mines

ON-GOING PROGRAM ADMINISTRATION COSTS

- Routine Inspections:
 - 1-2 during permitting
 - Min. of once annually
 - Complaint/Enforcement follow-up
 - Reclamation evaluation visits
- Fee Collection
- Other Compliance activities
- Overhead costs including office space and equipment
- Review of annual reports from operators/review of financial assurance levels
- Informational hearings on reclamation plans for new mines (as needed)
- Certification inspections - to evaluate and document (data gathering, photo-documentation) successful reclamation and to support release or partial release of financial assurance

C. ESTIMATING FEES FOR EXISTING MINING SITES

The following procedure and example are intended to illustrate how a county or local program could establish its annual fees for existing mine sites over the first three years of program implementation.

Recommended Procedures (a five step process):

- Step #1:** Determine the number of mine sites and applicable acreage utilizing the methods outlined above.
- Step #2:** Determine on-going program administration costs. Multiply the number of sites by the number of hours per site and by the cost per hour for personnel including overhead and support costs.
- Step #3:** Determine annual plan review costs. Multiply the number of mines for plan review by the estimated cost of plan review and divide this total by three to distribute those costs over the first three years of program implementation. (This is done because submittal of

detailed Reclamation Plans for existing facilities will be staggered over the first three periods of fee collection).

Step #4: Determine RA's annual acreage-based fee. Add the annual cost of plan review (step #3) and annual personnel costs (step #2) then divide that number by the total acres. This will give you an estimated per acre fee that can be applied to all operations.

Step #5: Determine total site-specific fees. The total fee paid by a specific operator will include an additional component reflecting the Department's share of fees must be added. Table 1 in s. NR 135.39, Wis. Adm. Code, specifies the appropriate amount based on acreage. The total amount paid for a given operation will be the amount from Table 1 plus the amount derived from the acreage-based fee determined in steps 1 through 4 above.

EXAMPLE: The following section is an example of the recommended 5-step procedure for setting fees described above. For purposes of this example it is assumed that the RA has 50 mining operations with a total of 750 unreclaimed acres. :

Step #1 - Determine the number of mine sites and acreage

(Example: 50 mining sites with 750 unreclaimed acres.)

Step #2 - Determine on-going administrative costs. Multiply the number of sites by the number of hours per site by the cost per hour

_____ mines x _____ hrs/site x \$_____/hr = \$_____ (cost/year)

(Example: 50 Sites x 15 hrs/site x \$22.00/hour = \$16,500.00/year)

Note: The department estimates that each mining operation will require an average of 15-20 hours of staff time per year. This estimate is based on an evaluation of the tasks needed and information from Marathon County's experience in implementing its program. The cost per hour will vary for each RA but should reflect staff time and necessary overhead expenses as appropriate.

Step #3 - Determine annual plan review costs. Multiply the number of mines needing plan review by the estimated cost of review and distribute over three years.

_____ mines x \$_____/review = \$_____ (plan review costs)

(Example: 50 Plan Reviews X \$900.00/plan = \$45,000.00/3 yrs. = \$15,000.00/year)

Note: The plan review fees specified in Table 3 in s. NR 135.39, Wis. Adm. Code, represent the department's estimate of reasonable plan review costs. For purposes of establishing annual fees, an RA may refer to these estimates or develop its own reasonable plan review costs. The example uses \$900.00 as the plan review cost, the fee applicable to operations under 26 acres, which will likely represent most operations in the state.

Step #4 - *Determine the RA's annual acreage-based fee. Add the cost of plan review (step #3) and on-going program costs (step #2) then divide that by the number of total acres.*

_____ annual plan rev. + _____ annual on-going costs ÷ _____ total acres = _____ cost/acre

(Example: \$15,000.00 + \$16,500.00 = \$31,500.00 ÷ 750 acres = \$42.00/acre fee)

Step #5 - *Determine total site-specific annual fee. Add together the acreage fee (step #4) and applicable DNR fee from Table 1 in s. NR 135.39, Wis. Adm. Code*

_____ acreage fee + _____ DNR fee = _____ total fee

(Example: For a 15 acre site, the total fee would be {\$42/acre x 15 acres} + \$90 = \$720/year)

Counties should keep in mind that these estimates are calculated for consideration during the first three years of the program. It is assumed that after the initial 3 years there should be a significant decrease in overall program administration costs since reclamation plans for existing mines would have been approved, resulting in a reduction in county or local administration cost and a corresponding reduction in the fee per acre. This could be accomplished by eliminating the component of the fee related to review of reclamation plans. Specifically, steps 3 and 4 from the above discussion would be eliminated and the longer-term annual fee to reflect on-going costs would be determined through steps 1, 2 and 5.

D. ESTABLISHING FEES FOR NEW MINES:

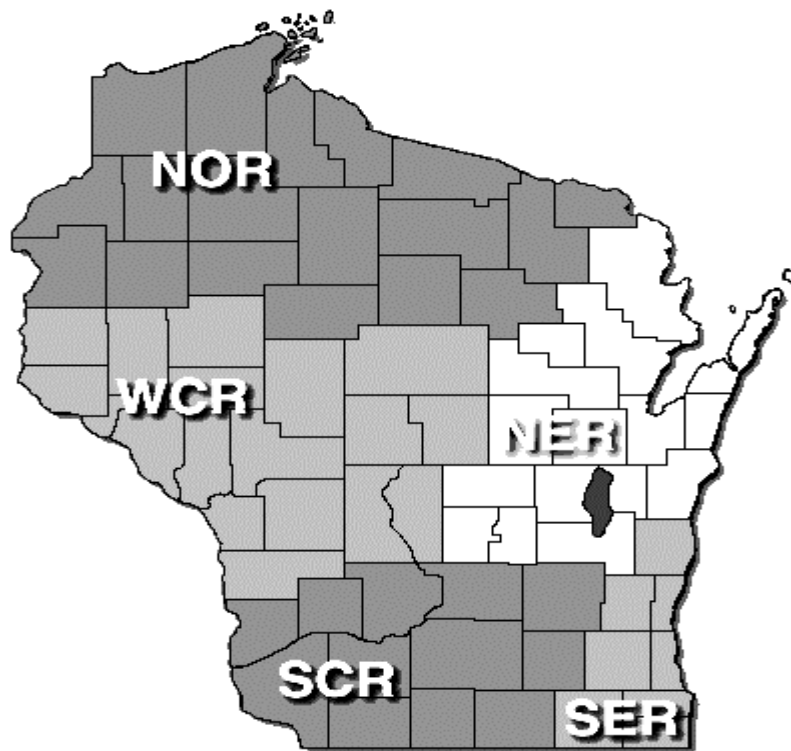
For new mining sites, the RA may choose to assess a separate plan review fee in addition to the annual acreage-based fee. RA's can refer to Table 3 in s. NR 135.39, Wis. Adm. Code, for guidance on reasonable plan review costs. If a separate plan review fee is recovered, the annual fees should reflect only the RA's on-going program administration costs as determined in steps 1, 2 and 5 in the suggested procedure described above. If a separate plan review fee is not established, the RA will need to develop a method of

recovering its plan review costs as part of its annual fee. This could be done by requiring a higher annual fee over an initial period, such as the first three years of operation. Once the RA's plan review costs have been recovered, the annual fee would be reduced to cover only the on-going program costs.

III: CONCLUSION

The information in this guidance is meant to be an outline only and does not necessarily address all possible means for determining adequate fees for every county or municipal non-metallic mining reclamation program. If there is anything in this document that you have questions on or need additional assistance, please contact one of the DNR staff listed on the following page.

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.



**Wisconsin Department of Natural Resources
Nonmetallic Mining Reclamation Contacts**

West Central Region:

Deb Pingel
DNR - Wausau Area Office
5301 Rib Mountain Drive
Wausau, WI 54401
715.359.4531

Northern Region:

Dave Kunelius
DNR
107 Sutliff Ave.
Rhineland, WI 54501
715.365.8924

and

Dave Kafura
DNR
810 W. Maple Street
Spooner, WI 54801
715.635.4065

South Central Region:

Jessica Maloney
DNR
3911 Fish Hatchery Road
Fitchburg, WI 53711
608.275.3298

Southeast Region:

Phil Fauble
DNR
101 S. Webster Street
Madison, WI 53707
608.267.3538

Northeast Region:

Dave Misterek
DNR - Oshkosh Service Center
625 E. County Road Y, Suite 700 Oshkosh, WI
54901
920.424.2104

Central Office
Tom Portle
DNR
101 S. Webster Street
Madison, WI 53707
608.267.0877

